

REMARKS

The Office Action of February 28, 2012 has been received and its contents carefully noted. Claims 1-3, 5-9, 11-12 and 14-28 are currently pending in the application, of which claims 1, 8 and 14 are independent claims. No claims have been added or amended. In view of the following remarks, Applicant respectfully requests reconsideration and timely withdrawal of the pending rejections for at least the reasons discussed below.

Rejection of Claims 1-3, 5-9, 11-12 and 14-28 Should be Reconsidered and Withdrawn

In the Office Action:

Claims 1-3, 6, 8-9, 14, and 19-22 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Brown et al. (US 6,901,381 B2) in view of Brotherston (US 2002/0010633 A1) and Muehlhaeuser (US 2004/0002902 A1) and Stern et al. (US 2003/134645 A1).

Claims 5, 7, 11-12, and 15-18 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Brown in view of Brotherston and Muehlhaeuser and Stern as applied to the respective independent claims, and further in view of Arteaga et al. (US 2002/0161826 A1).

Claims 23-28 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Brown in view of Brotherston and Muehlhaeuser and Stern as applied to the respective independent claims, and further in view of Examiner's Official Notice.

Applicant respectfully traverses each and every one of these rejections. Based on the following remarks, Applicant respectfully submits that the claims are allowable over the references relied upon in the Office Action.

A. Claims 1-3, 6, 8-9, 14, and 19-22 are Patentable

The Office Action relies on four separate references to reject independent claims 1, 8 and 14: Brown in view of Brotherston, Muehlhaeuser and Stern. Having to rely on four separate references to reject independent claims 1, 8 and 14, the Office Action concedes that the combination of Brown, Ziarno, and Muehlhaeuser, does not disclose wherein the PDA “is configured to provide a change due flag to record consumer identifying information to capture the amount of change due to consumer at the point of sale.” The Office Action relies on Stern to teach “wherein a device is configured to provide notification (e.g., flag) identifying information to capture the amount of compensation due to a consumer (see at least [0057]).” (*See* Office Action, at p.7) Applicant respectfully disagrees that Stern teaches this aspect.

Applicant respectfully submits that Stern, whether taken alone or in any proper combination, does not disclose or render obvious the aspect of wherein the said PDA “is configured to provide a change due flag to record consumer identifying information to capture the amount of change due to consumer at the point of sale,” as recited in independent claims 1, 8 and 14. Stern discloses at [0057] “compensation as a result of one or more of the steps 102, 104, 106 and 108.” Referring to step 102 (see at least, [0037]), this step is associated with detecting the presence of a person carrying or otherwise associated with the device at the location, i.e., compensation of the person

carrying or otherwise associated with the device. The compensation disclosure is about the person carrying or using the device.

Stern does not disclose recording “consumer identifying information” to capture the amount of change due to the consumer at the point of sale. Rather the only identifying information recorded in Stern might be identifying information pertaining to the user of the device, not the identifying information of another party, such as that of a consumer at the point of sale. So Stern’s disclosure at [0057] fails to disclose the recordation of another party’s identifying information, one that is not a user of the device.

The Office Action also asserts that it would have been obvious for one of ordinary skill in the art to modify the teachings of Brown, in view of Brotherston, Muehlhaeuser, and Stern because the resulting combination would provide accurate/quick determination of the amount due and provide a notification regarding the compensation.

The Applicant respectfully disagrees that one of ordinary skill in the art would combine the teachings of Brown, Brotherston, Muehlhaeuser and Stern as proposed by the Office Action. Applicant submits that the Office Action has inappropriately and impermissibly used the application specification as a map to pick and choose excerpts of Brown, Brotherston, Muehlhaeuser and Stern to reject the pending claims. Absent the present patent application, one of ordinary skill in the art would have had no reason to look to Brown, Brotherston, Muehlhaeuser and Stern to arrive at the subject matter presently claimed in claims 1, 8 and 14.

Even if one were to combine Brown, Brotherston, Muehlhaeuser and Stern as suggested by the Office Action, as discussed above, which Applicant contends would not have been obvious to do, any resulting system from the combination of teachings still

does not teach to a PDA configured to provide a change due flag to record consumer identifying information to capture the amount of change due to consumer at the point of sale, as required by each of the independent claims 1, 8 and 14.

With respect to dependent claims 2, 3, 6 and 19-22, Applicant asserts that these claims are allowable on their own merit and at least because they depend on independent claim 1, 8 or 14, which Applicant submits has been shown to be allowable.

A rejection under 35 U.S.C. §103 based on obviousness cannot be properly maintained without a proper disclosure of each and every element and the motivation to combine the elements. Here, the applied references fail to disclose or render obvious all of the claimed subject matter of claims 1, 8 or 14.

B. Claims 5, 7, 11-12, and 15-18 are Patentable

Dependent claims 5, 7, 11-12 and 15-18 were rejected in the Office Action as being unpatentable over Brown in view of Brotherston, Muehlhaeuser and Stern as applied to the respective claims above, and in further view of Arteaga. Applicant asserts that these claims are allowable on their own merit and at least because they depend on independent claims 1, 8 or 14, which Applicant submits has been shown to be allowable.

Applicant expressly includes the arguments noted above with respect to Brown, Brotherston, Muehlhaeuser and Stern and that the combination does not disclose, nor render obvious the features of the present invention. Applicant further notes that one of ordinary skill in the art, absent impermissible hindsight, would have had no reason to attempt to combine Stern's data perimeter tracking device with Brown, Brotherston, or Muehlhaeuser's transactional sales devices. Unlike the Applicant's disclosure, Stern's recordation of identifying information appears to be applicable only to the user of the

device, and is not used to record another party's identifying information who is not the user of the device. Arteaga's mobile handheld device also appears not to disclose wherein the device is configured to provide a change due flag to record consumer identifying information of another party who is not the user of the device. Arteaga fails to cure the deficiencies of Brown, Brotherston, Muehlhauser and Stern or the combination of thereof.

C. Claims 23-28 are Patentable

Dependent claims 23-28 were rejected in the Office Action as being upatentable over Brown in view of Brotherston, Muehlhaeuser and Stern as applied to the respective claims above, and in further view of the Examiner's Official Notice. Applicant asserts that theses claims are allowable on their own merit and at least because they depend on independent claims 1, 8 or 14, which Applicant submits has been shown to be allowable.

Additionally, Applicant respectfully traverses the Examiner's official notice that it is old and well known in the commerce arts to uncheck a change due flag for a given monetary transaction and further to associate a change due flag to a given identifier. (*See* Office Action, at p. 12)

Applicant respectfully requests that the Examiner produce authority that shows the relevant features were commonly known, or withdraw all of the official notices, pursuant to the rules and procedures of the U.S. Patent & Trademark Office. In particular, Applicant requests that the Examiner provide objective evidence that it was commonly known to: (i) uncheck a change due flag for a given monetary transaction, and (ii) associate a change due flag to a given identifier. Applicant submits that the foregoing features are not commonly known, and even if these features were commonly known, it

would not have been obvious to one of ordinary skill in the art to combine these features with Brotherston, Muehlhaeuser and Stern.

In view of the fact that none of the art of record, whether considered alone or in any proper combination, discloses or renders obvious the present invention as defined by the pending claims, and in further view of the above remarks, these rejections have been rendered moot. Reconsideration of the Examiner's action and allowance of the present application are respectfully requested and are believed to be appropriate.

CONCLUSION

Applicant believes that a full and complete response has been made to the Office Action and respectfully submits that all of the stated grounds for rejection have been overcome or rendered moot. Accordingly, Applicant respectfully submits that all pending claims are allowable and that the application is in condition for allowance.

Should the Examiner feel that there are any issues outstanding after consideration of this response the Examiner is invited to contact the Applicants' undersigned representative at the number below to expedite prosecution.

Prompt and favorable consideration of this Reply is respectfully requested.

Respectfully submitted,

/Safet Metjahic/

Safet Metjahic
Reg. No. 58,677

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McGuireWoods LLP
1750 Tysons Boulevard
Suite 1800
McLean, VA 22102-4215
Tel: 202-857-1726
Fax: 703-712-5240

SM/LJT/cyr